

TOXICITY PROGRAM REVIEW  
STAKEHOLDER'S GROUP MEETING #6  
January 11, 2002

PRESENT: Bill Taylor, DanKusnierz, Bill Zarolinski, Nick Bennett, Darold Wooley, John Barlow, Steve Silva, Jennie Bridge, Bill Alsop, Marvin Cling, Clarissa Trasko, Brian Kavanah, Gregg Wood, Dennis Merrill

1. A correction to the minutes of the December 11 meeting. In item 9, first line, "10" should be
2. In follow-up to the discussions of December 11, DEP distributed a list of smaller municipal facilities showing chronic dilution factors for most locations. In some cases, the dilution factor is not determined since DEP does not have enough information on outfall configurations. The list of facilities allows checking of the proposed exemption from testing in section B.1 of the proposed chapter 530. This would cover facilities with only domestic wastes having permitted flows of less than 50,000 gallons per days and a chronic dilution factor of more than 50:1. In response to a question, DEP said that non-contact cooling water discharges would not be categorically subject to toxicity testing requirements. However, any individual source could be included if site specific information indicates that there may be a risk of effluent toxicity. It was noted that cooling water could have concentrations of heavy metals.
3. To supplement previous discussions on section B.2, DEP distributed a list showing the numbers of exceedences by facility for the period of January 1996 through mid 2001. The list was sorted by chronic dilution factor. After discussing the list, the group was generally satisfied with where the lines are drawn for levels of testing.
4. On section C.3, there was concern and discussion about the inclusion of permit limits following the occurrence of an exceedence. Some thought that limits should always be included since the program requires very little testing and the chance of effluent variability can be great, making a clear need to conduct continuing follow-up testing. Others didn't believe that a single exceedence necessarily justifies a permit limit and additional long-term testing. Some problems can be identified and eliminated through a TRE. It was suggested that the second paragraph in this section be revised to make it more specific and allow DEP to make case-by-case decisions. Alternately, some thought that this paragraph should be removed. In the end, the issue was left for DEP to further discuss internally and make a final decision on what, if anything should be in the formal draft rule.
5. In section C.4.a, DEP proposed the following language be added to the end of the second sentence, "provided water quality criteria are not exceeded". The group felt that with this change this subsection is a reasonable compromise. Subsection C.4.c on tiers in permits will be removed from the draft.
6. After discussion of section C.5, the group did not see any practical benefit or added value to the last sentence of the first paragraph and the items a through d. These will be removed

from the draft. There was also discussion about including language that would allow reassessment of reasonable potential status over the life of a permit. This would give the opportunity to remove limits and extra testing requirements that are based on test results then more than five years old. Alternately, this could be accomplished through placing a reopener clause in individual permits. DEP will draft up an example of this type of language.

7. A new section E.6 should be added to describe the statistical methods that could be used to interrupt WET test data. Specifically, hypothesis testing is now used for some WET organisms, but Inhibition Concentration testing may be more appropriate. This subject is best suited for a technical working group. DEP will organize this.
8. DEP proposed language changes for section C.6. In a, strike "detection" in the first line. In c, replace "detectable amount" with "level specified by the Department", and strike "detection" in the last sentence.
9. DEP proposed to change the formula in section D.1.a.ii to replace  $Q_e$  with  $(Q_w + Q_o)$ , where  $Q_w$  is the volume of water withdrawn from the receiving water upstream of the discharge. Also, changes were proposed to section D.1.b to correct some context problems and make the section read more consistently.
10. To tie the discussion of sections D.3, D.4 and D.5 together, DEP suggested that the allocation model concept covered by D.5 be discussed first as a platform for subsequent discussion of the background and site-specific adjustments, as these can be treated as "inputs" to the model. There was a general discussion of the model presented at the December meeting, with the following points being made.
  - It was noted that acute criteria and segments of tributaries are not fully covered in the model. A more full fleshing out of the model will need to look at those elements.
  - In order to permit new or increased discharges, DEP need to address anti-degradation requirement in the law. The 10% growth factor in the model help to fulfill that requirement by providing an unallocated increment that can be used without having to reallocate loads previously assigned to existing discharge sources.
  - The marine water quality criteria for some pollutants are lower than those for fresh water. Where this comes up, DEP can reduce the total loading at the head of tide to make sure marine criteria are protected at that point. In estuaries, changing dilution factors and limited a number of facilities in a reach of receiving water make case-by-case evaluation the most practical approach.
  - There was some concern that there needs to be language to allow use of other allocation methods where necessary to protect water quality in certain cases.
  - The model and resulting permit limits should not act as a shield if water quality criteria violations are found.
  - In some cases, there may be compliance schedules needed for facilities to meet limits developed through an allocation model.
  - The model should specify that the evaluation will be based on the more stringent of criteria - acute or chronic, local or far field.

11. In conjunction with the allocation model, the group discussed the possibility of effluent credit trading from those with unused allocations to those who need more. Topics discussed included: how much would the State be involved in such transactions? What percentage of unused credits should be held back and not subject to trading? If money is exchanged, should the State get a percentage of the transaction? To follow up the discussion, DEP will try to flesh out some concepts on how a system might work.
12. There was some question about the language in the present section D.5 stating that the same background concentrations and other receiving water characteristics be used for all facilities on a river segment. In general, the intent is to see that the allocations within a reach of river give each facility equitable allocations based on common assumptions.
13. The model will have to address how to do allocations for a pollutant that is an issue at only one facility but not found at other facilities. In this circumstance, how much of the total allocation should go to the single source? Would other facilities need to get effluent limits?
14. There was discussion about ways to allocate loads among facilities on a river. This could be done in a manner similar to that which has been done in the past where loads are permitted on an as needed basis, but keeping a running total of the aggregate load at the bottom of the watershed. The originally proposed method of allocating only on the basis of flow may not best match actual loads and needs. As an alternative, DEP will explore a system allocating load using current discharge quantities, calculated with the reported concentrations and the facility's design flow.